



Erate Consulting Specialists, Inc.

Received & Inspected

JAN 11 2011

FCC Mail Room

1-4-11

Marlene Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street
Washington, DC 20554

Royal ISD
BEN 141293
471 application # 351477
FRN 976792
SPIN 143024659 INX, Inc. formerly InterNetwork Experts

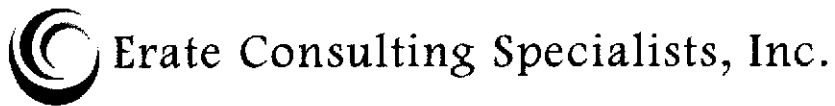
Contact Person: Lee Ullrich
Address: 7422 Foster Creek Dr.
 Richmond, TX 77406
Phone: 281-232-0928
Fax: 281-232-0949
Email: lee@ecspecialists.net

USAC Action being appealed:

Funding Commitment Adjustment Report
for Form 471 Application Number:
351477

Funding Request Number:	976792
Services Ordered:	INTERNAL CONNECTIONS
SPIN:	143024659
Service Provider Name:	INX Inc.
Contract Number:	RISD2003
Billing Account Number:	RISD2813758380
Site Identifier:	141293
Original Funding Commitment:	\$399,534.96
Commitment Adjustment Amount:	\$399,534.96
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$327,040.95
Funds to be recovered from Applicant:	\$327,040.95

No. of Copies rec'd 0
List A B C D E



Funding Commitment Adjustment Explanation:

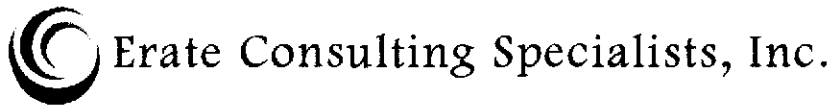
"After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review it was determined that the applicant did not have a contract in place at the time of submission of the Form 471. This determination was based on applicant outreach for a contract, which resulted in the applicant not being able to provide a copy of a signed contract. FCC rules require applicants to have a valid contract as defined by the applicant's state procurement laws and regulations at the time they submit the Form 471. Since the applicant was unable to demonstrate that they had a contract in place at the time of submission of the Form 471 that meets the state laws definition of a valid contract, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds from the applicant."

We understand that Mr. Dan Friend of the SLD reached out to the technology director for Royal Independent School District (the "Applicant") in November of 2007 requesting a contract for FRN 976792 from Funding Year 2003. The Applicant's technology director at that time was Ron Hardman. It is apparent that Mr. Hardman did not produce the contract since Mr. Friend's request was followed by similar requests from Robert McCloud. In Year 13, I became a consultant for the Applicant and I am responding with this appeal on their behalf.

The Applicant routinely retains documents of this type in the office of its technology director and, under ordinary circumstances, it could readily be made available from this source. However, it appears that Mr. Hardman may have erased data including the contract from the Applicant's computers just prior to the involuntary termination of his services with the Applicant. As confirmed by the letter included as **Attachment A**, in fact, it appears that Hardman erased all of the data on the email server that had anything to do with his correspondence with anyone including SLD, service providers, etc. It appears that he may have also destroyed the Applicant's hard copies. Unfortunately, there are no more records of any contracts, emails, etc. concerning this FRN and all efforts to retrieve them by Corey Kelly, the current technology director, have proven fruitless.

It remains the position of the Applicant, however, there is sufficient evidence that a valid contract with the service provider existed at the time the service was provided. Although the contract itself cannot be located for the reasons noted, we would offer the following as evidence of its existence:

- **Attachment B** is a copy of the purchase order for the FRN as well as the service certification and check for the FRN, both of which in and of themselves might arguably evidence the necessary offer and acceptance evidencing the meeting of the minds required to form a contractual relationship.



- Ms. Cynthia McCarthy, the e-rate contact at the service provider, INX, Inc., has informed me that, prior to the adoption of the FCC document retention requirements, they most likely would have destroyed any documents from that period of time (see e-mail in Attachment C). She did, however, provide me with the only remaining documentation she has which is included as **Attachment C**. The Attachment is a letter to USAC concerning an overpayment refund to USAC with regard to this FRN. Such a letter would not have been possible had there not been a firm agreement as to the goods to be delivered as well as the price to be paid.
- **Attachment D** is INX, Inc. documentation regarding this FRN.
- **Attachment E** is a copy of the minutes of the School Board meeting in December 2002 during which the Board went into executive session to discuss matters related to this contract indicating that formal action may have been taken on the part of the District while in executive session.
- It can be assumed that USAC requested a copy of the contract as a part of its review process since in March 2004, an FCDL was issued signaling that all was in order with regard to the transaction and completed according to the rules. See **Attachment F**.

It is our contention that there is little reason to doubt that there was a contract in place before the 471 was filed as noted above. The State of Texas in its contract guide outlines the legal elements for a valid contract. See **Attachment G**.

Alternatively, it is the Applicant's position that there are no records at the offices of either the Applicant or the service provider, because the documents were destroyed since there was no FCC document retention policy in effect at the time this 471 was certified and postmarked on February 4, 2003 (FCC 04-190, paragraphs 45-50). The last date of service under this FRN was September 30, 2004.

The current FCC retention policies were not enacted until October 2004. The FCC rules state that applicants and service providers are required to keep records for five years after the last date of service (9-30-2004) for this FRN. However, since no policy was in place at the time the service was completed and the October 2004 policy did not apply to this transaction, it is our position that the FCC did not require that the District retain a copy of this contract for a 5-year period. In fact, in 2004, the FCC has indicated in its discussion of its record retention policy that [t]his rule change shall go into effect when this order becomes effective and, as such, will apply to Funding Year 2004 and thereafter" (FCC 04-190, paragraph 47). The subject transaction occurred in Funding Year 2003.



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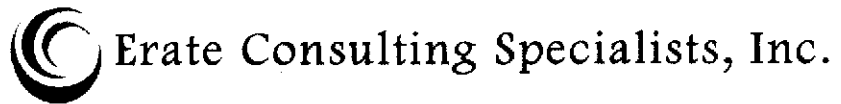
It is not clear at this time why USAC-SLD decided to pursue this action after a 7 year period nor were they forthcoming for it's reasons either, but we feel we gave them concrete evidence that there was an agreement between the two parties consistent with FCC rules and they seemed to disregard all information sent them. I received a letter, **Attachment I**, and phone call from the reviewer, Mr. Tim Curtin of Program and Compliance, USAC-SLD, asking me to send him information on the process by which a legally binding agreement with the service provider was established prior the filing of form 471 application #351477 which I did on 11-22-10, **Attachment J**. He told me he wanted to clear it off his desk and answering this simple question would take care of it. On 11-30-10 I received a denial letter from USAC-SLD, denying the appeal, **Attachment K**. In this letter you will notice on page 2, top of page, that USAC-SLD states that "USAC's Program Compliance Team has reviewed this documentation and has determined the purchase orders submitted in lieu of a legally binding contract were issued and/or dated after your Form 471 certification was postmarked on February 4, 2003". I'm not clear what relevance issuing a P.O. after the 471 was certified has to do with this case. After a mutual agreement is made in order to satisfy FCC requirements, it does not matter when a P.O. is issued. We did not submit the P.O. in lieu of a legally binding agreement, we just offered proof that if there were a P.O. then there would have had to be a binding agreement. It appears that Mr. Curtin wanted us to be untruthful and invent something so he could get through with this before the holidays, we, however, chose to tell the truth and he and his superiors apparently decided that the truth was not what they wanted.

In summary, the Applicant has spent many months diligently cleaning up after its former director of technology. While we have been challenged to find hard copies of the actual contract, it is likely that they were destroyed as a routine part of the business of the Applicant and the Service Provider, which was permissible under the rules that were applicable to transactions in Funding Year 2003 (or destroyed by Mr. Hardman). We have, however, found evidence of the existence of the necessary contractual relationship, which we submit for your consideration.

Rescission of this funding will present a serious hardship to the Applicant and, for that reason as well as those noted above, we would appreciate for your favorable consideration of our appeal. Please don't punish a School District for what a questionable employee did.

Thank you

Lee Ullrich
Erate Consulting Specialists, Inc.



Cc: Congressman Michael McCaul
10th District
5929 Balcones, Suite 305
Austin, TX 78731



PhoneLog

SLD call from Tim Curtin

Jan 7, 2011 11:52:02 AM

Who: New Call
When: Nov 17, 2010 10:00:40 AM
Spoke to: Tim Curtin

Mr. Curtin from SLD called to ask me to send him some info on how we arrived at an agreement between Royal and InterNetwork Experts. Said if I did he could clear it off his desk